

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SHIELDALLOY METALLURGICAL CORP.)	Docket No. 40-7102
)	
)	
(Licensing Amendment Request for)	
Decommissioning the Newfield,)	
New Jersey Facility))	

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S REPLY TO THE RESPONSE OF NRC STAFF**

The contention "focuses the hearing process on real disputes susceptible of resolution in an adjudication [and] helps to assure that . . . hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contention. Duke Energy Corp., (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334. Contentions are only required to place "other parties in the proceeding on notice of the petitioners' specific grievances and thus gives them a good idea of the claims they will be either supporting or opposing." Id.

Contentions 1 and 3

NRC Staff ("Staff") does not oppose admitting these contentions except for the portions that NJDEP claims that Shieldalloy's Decommissioning Plan ("DP") should be rejected because it fails to permanently isolate the radioactive waste (Contention 1) and the cap fails to prevent rainwater infiltration (Contention 3).

Staff claims that the Low-Level Radioactive Waste Policy Act's ("LLRWPA") requirement to permanently isolate low-level radioactive waste ("LLRW"), 42 U.S.C. § 2021b(7), does not apply here because Shieldalloy does not propose to become a facility that will receive LLRW from other persons. Sr¹ page 7. However, the LLRWPA does not limit its provisions to facilities that receive LLRW from other persons. The LLRWPA states that "[e]ach State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of--(A) low-level radioactive waste generated within the State." 42 U.S.C. § 2021c(a)(1). The term "disposal" is defined as "the permanent isolation of low-level radioactive waste pursuant to the requirements established by the Nuclear Regulatory Commission under applicable laws." 42 U.S.C. § 2021b(7). The LLRWPA does not make an exception for the disposal of LLRW by the generator.

¹"Sr" refers to the Staff's response to NJDEP's Request for a Hearing.

Furthermore, the standards set forth in the LLRWPA should apply since it regulates the same materials, LLRW, that are in issue in this case. Shieldalloy's LLRW should therefore be held to the same standards for disposal as other LLRW. To argue that the LLRWPA does not apply because Shieldalloy does not propose to accept additional LLRW is irrelevant to the goal of protecting the public health and safety from the 63,000 m³ of LLRW that Shieldalloy proposes to dispose at its facility. The proposed engineered barrier design in the DP would not meet the provisions of the LLRW regulations at 10 C.F.R. Part 61 regarding technical requirements for land disposal facilities, including the minimization, to the extent practicable, water infiltration, and environmental monitoring.

Because the DP does not propose to permanently isolate its radioactive waste from rainwater or groundwater, there is a genuine dispute of law as to whether the LLRWPA applies to Shieldalloy that requires a hearing. See 10 C.F.R. § 2.309(f)(vi).

Contentions 5, 9, and 10

Staff does not oppose admitting these contentions except for the portions that NJDEP argues that the DP should be rejected because it failed to conduct dose modeling for the resident farmer and the "all controls fail" scenarios. Staff argues that NJDEP does